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10 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

11 THIRD JUDICIAL DISTRICT AT ANCHORAGE

12 DONNA PATRICK, JAMES K.
BARNETT, and JOHN P. LAMBERT,

13 Appellants,

14 vs.

Case No. 3AN-18-05726CI

15 THE ALASKA PUBLIC OFFICES
16 COMMISSION,

17 Appellee.
18

19 **APPELLANTS' INVITED RESPONSE TO**
APPELLEE'S PETITION FOR REHEARING

20 This Court should deny rehearing for two reasons. First, APOC points to nothing
21 specific in the Ninth Circuit's actual opinion in *Thompson v. Hebdon*, 909 F.3d 1027 (9th

1 Cir. 2018), or *Thompson v. Dauphinas*, 217 F. Supp. 3d 1023 (D. Alaska 2016), that
2 would cabin the courts' reasoning in the way APOC suggests. Second, more importantly,
3 no matter how this case turns out, this Court correctly recognized that this case is ready
4 for expeditious review by the Alaska Supreme Court. Any further delay that would come
5 with granting rehearing is thus unwarranted.

6 *First*, APOC claims that this Court misunderstood the federal courts' decisions in
7 *Thompson*. But it does not point to any specific errors in either this Court's opinion or
8 either federal court opinion. Instead, it points only to passages buried in the parties' briefs
9 explaining APOC's enforcement practices, *see* Pet. 2, 3 & nn. 4–5, and it contends that
10 the Ninth Circuit's reasoning rests on a "justification that does not make sense" for the
11 kind of political groups at issue in this appeal, *id.* at 3. APOC's inferential reasoning is
12 not sufficient reason for the Court to grant rehearing. *See* Alaska Rule of App. P. 506(a)
13 (listing grounds for rehearing, which include overlooking or misapplying a "decision or
14 principle directly controlling" or a "material fact or proposition of law").

15 Indeed, not only does APOC fail to point to a specific legal error in this Court's
16 decision, but there is not one. This Court correctly noted the federal courts' confirmation
17 that the "prevention of actual or perceived quid pro quo corruption" is an "important state
18 interest." Op. 18–19. And the *Thompson* trial court's findings of fact regarding corruption
19 in Alaska remain valid. Op. 16–17. These developments doubtless should have led APOC
20

1 to at least revisit its 2012 Advisory Opinion. Op. 18. That APOC did not do so was error
2 regardless of the scope of the federal courts' decisions in the two *Thompson* cases.¹

3 Moreover, the fact that a case was litigated narrowly but decided on broader
4 principles is not particularly unusual. And APOC points to no law that what is said in one
5 party's appellate brief but not mentioned by a court somehow cabins a decision's
6 applicability. The opposite is true: it is the reasoning of a court's opinion that matters for
7 future courts. *See, e.g., Shaw v. Dep't of Admin., Pub. Def. Agency*, 816 P.2d 1358, 1362
8 n.6 (Alaska 1991) (noting that while a Supreme Court case "did not hold that post-
9 conviction relief is an element of malpractice in a criminal case, we believe the court's
10 reasoning and holding support such a result"). If APOC thought the language of
11 *Thompson* was too broad for the question presented there, it could have requested
12 rehearing in federal court.

13 *Second*, more important, APOC's petition ignores what is perhaps the most crucial
14 part of this Court's opinion: the recognition in the final footnote that all parties should
15 "seek immediate review of these important issues from the Alaska Supreme Court." Op.
16 at 23 n.69. Further delay of this case, which may now promptly proceed to review by the
17

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19 ¹ Nor does APOC's rehearing petition address at all the continuing validity of *State v.*
20 *ACLU*, 978 P.2d 597 (Alaska 1999). That decision remains binding on APOC, and
nothing in *Thompson* says otherwise. *See* Op. 22–23.

1 Alaska Supreme Court, would be prejudicial for Appellants.² This appeal was taken in
2 March, 2018; testimony was heard in October, 2018; and briefing was complete by
3 February, 2019. The record is complete and this Court's opinion is well-reasoned and
4 will be valuable to the Alaska Supreme Court. This Court should thus deny the petition
5 and permit the case to move forward.

6 DATED this 13th day of November, 2019.

7
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12 Certificate of Service

13 On the 13th day of November, 2019, a true and
14 correct copy of the foregoing document
was sent by U.S. Mail, to the following parties:

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19 ² As the Court recognized, this Court's opinion did not consider Appellants' primary
20 theory, which relied on the historical understanding of corruption. Op. 23 n.68. But the
testimonial evidence is in the record and the argument has been preserved, so it may be
considered by the Alaska Supreme Court.

21 APPELLANTS' INVITED RESPONSE TO APPELLEE'S
PETITION FOR REHEARING
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